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FLYNN & ROYALTY v. JACKSON BROS. AND OTHERS.—Decided at Wytleville, July 9, 1896.—*Buchanan, J. Absent, Harrison, J.*

1. APPEALS—*Appeals by several defendants and dismissal by one—Motion under Sec. 3451 and Sec. 3452 of Code.* When several defendants appeal, and the appeal of one of them brings up a particular question, it is immaterial whether the other defendants are interested in that question of appeal or not. Being a matter of no practical importance this court will not consider a motion to dismiss the appeal of the other defendants, on the ground that the decree against them was on a bill taken for confessed, and that their proper remedy was by motion under sections 3451 and 3452 of the Code.

2. CHANCERY PLEADING—*Want of summons on petition—Objection for first time in appellate court.* Objection cannot be made for the first time in the appellate court that no summons was awarded against the defendant, on a petition filed in the lower court in a suit brought by another creditor to set aside a fraudulent deed made by his debtor, when it appears that, after the petition was filed, an account of liens was ordered and taken, of which the defendant had due notice, and the debt of the petitioner reported, and that no exception was filed to the report for the want of notice or summons on the petition.

3. POST-NUPTIAL SETTLEMENT—*Presumed to be voluntary—Burden of proof.* Every post-nuptial settlement by a husband who is indebted is presumed to be voluntary as to his then existing creditors, and therefore fraudulent and void as to them, unless those claiming under it can show that it was made for a valuable consideration. The burden of proof is on those claiming under the settlement.

4. POST-NUPTIAL SETTLEMENT—*Recitals in deed not evidence against creditors—Answers of husband and wife not evidence in their favor.* The recitals in a deed of settlement as to the consideration, though admissible against a person claiming under the husband, are not evidence against creditors who assail the validity and fairness of the deed. Nor are the answers of the husband and wife evidence in their favor in a suit by creditors attacking the deed where no discovery is called for.

5. HUSBAND AND WIFE—*Receipt of wife's money by husband—Gift.* If a husband collects and receives his wife's money, and uses it as his own, with her knowledge and consent, without any promise of repayment, the law does not imply a promise of repayment, but presumes it was a gift by her to him. No subsequent agreement between the husband and wife, to the prejudice of his creditors, can make that a debt which was originally a gift; nor will a conveyance by the husband to his wife in consideration thereof be valid as against existing creditors of the husband.

6. POST-NUPTIAL SETTLEMENT—*Relinquishment by wife—Charging her estate with his debts.* Although a post-nuptial settlement may have been made under such circumstances as to be void as to creditors of the husband, yet if the wife relinquishes her interest in property, or assumes the payment of debts of her husband so as to make them charges on her separate estate, upon the faith of such settlement, it will be held good to the extent of a just compensation for the interest which she may have parted with, or of the debts which she has assumed to pay.